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8 UNITED STATES DISTRICT COURT
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10 San Francisco

11 JOSE DANIEL CASTILLO-ANTONIO,

No. C 13-05548 LB

12 Plaintiff,

**ORDER DIRECTING THE CLERK
OF THE COURT TO REASSIGN THIS
ACTION TO A DISTRICT JUDGE**

13 v.

14 RUI LIAN TAN d/b/a Yuet Foo Seafood;
KWONG C. WONG MAN; F. PING,

15 Defendants.
16 _____ /

17 In this action, Plaintiff has sued three Defendants: (1) Rui Lian Tan d/b/a Yuet Foo Seafood; (2)
18 Kwong C. Wong Man; and (3) F. Ping. Plaintiff filed his complaint on November 29, 2013, and on
19 December 5, 2013, Plaintiff consented to the undersigned's jurisdiction. Complaint, ECF No. 1;
20 Consent (Plaintiff), ECF No. 6. Plaintiff served all three Defendants on December 5, 2013 as well.
21 Executed Summons, ECF No. 7. None of the Defendants responded to the Complaint, so the
22 Clerk entered their defaults on February 19, 2014. Entry of Default, ECF No. 9. On March 12,
23 2014, two of the Defendants—Kwong C. Wong Man and F. Ping—stipulated with Plaintiff to set
24 aside their defaults, and the court granted the stipulation on March 17, 2014. Stipulation and Order,
25 ECF No. 11. Those two Defendants thereafter answered the Complaint, Answer, ECF No. 13,
26 consented to the undersigned's jurisdiction, Consent (Man & Ping), ECF No. 15, and now they
27 move to dismiss it, Motion, ECF No. 17.

28 The problem is that the third Defendant—Rui Lian Tan—has been served but has yet to appear

1 and consent to the undersigned's jurisdiction. 28 U.S.C. § 636(c) requires the undersigned to
2 receive the consent of all parties before she can rule on the pending motion to dismiss, and served
3 defendants, like Rui Lian Tan, are considered parties for consent purposes. *Cf. Ornelas v. De*
4 *Frantz*, C 00-1067 JCS, 2000 WL 973684, at *2 n.2 (N.D. Cal. June 29, 2000) (unserved defendants
5 are not "parties" for consent purposes) (citing *Neals v. Norwood*, 59 F.3d 530, 532 (5th Cir. 1995)).
6 Therefore, the undersigned finds that this action must be reassigned to a district judge and directs the
7 Clerk of the Court to do so.

8 **IT IS SO ORDERED.**

9 Dated: January 13, 2015



10 LAUREL BEELER
11 United States Magistrate Judge
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